

AMENDMENTS TO LB161

Introduced by Schumacher, 22.

1 1. Insert the following new section:

2 Sec. 2. Section 77-5727, Revised Statutes Cumulative Supplement,
3 2016, is amended to read:

4 77-5727 (1)(a) If the taxpayer fails either to meet the required
5 levels of employment or investment for the applicable project by the end
6 of the fourth year after the end of the year the application was
7 submitted for a tier 1, tier 3, or tier 6 project or by the end of the
8 sixth year after the end of the year the application was submitted for a
9 tier 2, tier 4, or tier 5 project or to utilize such project in a
10 qualified business at employment and investment levels at or above those
11 required in the agreement for the entire entitlement period, all or a
12 portion of the incentives set forth in the Nebraska Advantage Act shall
13 be recaptured or disallowed.

14 (b) In the case of a taxpayer who has failed to meet the required
15 levels of investment or employment within the required time period, all
16 reduction in the personal property tax because of the act shall be
17 recaptured.

18 (2) In the case of a taxpayer who has failed to maintain the project
19 at the required levels of employment or investment for the entire
20 entitlement period, any reduction in the personal property tax, any
21 refunds in tax allowed under subsection (2) of section 77-5725, and any
22 refunds or reduction in tax allowed because of the use of a credit
23 allowed under section 77-5725 shall be partially recaptured from either
24 the taxpayer or the owner of the improvement to real estate and any
25 carryovers of credits shall be partially disallowed. The amount of the
26 recapture shall be a percentage equal to the number of years the taxpayer
27 did not maintain the project at or above the required levels of

1 investment and employment divided by the number of years of the project's
2 entitlement period multiplied by the refunds allowed, reduction in
3 personal property tax, the credits used, and the remaining carryovers. In
4 addition, the last remaining year of personal property tax exemption
5 shall be disallowed for each year the taxpayer did not maintain such
6 project at or above the required levels of employment or investment.

7 (3) In the case of a taxpayer qualified under tier 5 who has failed
8 to maintain the average number of equivalent employees at the project at
9 the end of the six years following the year the taxpayer attained the
10 required amount of investment, any refunds in tax allowed under
11 subsection (2) of section 77-5725 or any reduction in the personal
12 property tax under section 77-5725 shall be partially recaptured from the
13 taxpayer. The amount of recapture shall be the total amount of refunds
14 and reductions in tax allowed for all years times the reduction in the
15 average number of equivalent employees employed at the end of the
16 entitlement period from the number of equivalent employees employed in
17 the base year divided by the number of equivalent employees employed in
18 the base year. For purposes of this subsection, the average number of
19 equivalent employees shall be calculated at the end of the entitlement
20 period by adding the number of equivalent employees in the year the
21 taxpayer attains the required level of investment and each of the next
22 following six years and dividing the result by seven.

23 (4) If the taxpayer receives any refunds or reduction in tax to
24 which the taxpayer was not entitled or which were in excess of the amount
25 to which the taxpayer was entitled, the refund or reduction in tax shall
26 be recaptured separate from any other recapture otherwise required by
27 this section. Any amount recaptured under this subsection shall be
28 excluded from the amounts subject to recapture under other subsections of
29 this section.

30 (5) Any refunds or reduction in tax due, to the extent required to
31 be recaptured, shall be deemed to be an underpayment of the tax and shall

1 be immediately due and payable. When tax benefits were received in more
2 than one year, the tax benefits received in the most recent year shall be
3 recovered first and then the benefits received in earlier years up to the
4 extent of the required recapture.

5 (6)(a) Except as provided in subdivision (6)(b) of this section, any
6 personal property tax that would have been due except for the exemption
7 allowed under the Nebraska Advantage Act, to the extent it becomes due
8 under this section, shall be considered delinquent and shall be
9 immediately due and payable to the county or counties in which the
10 property was located when exempted.

11 (b) For a tier 2 large data center project, any personal property
12 tax that would have been due except for the exemption under the Nebraska
13 Advantage Act, together with interest at the rate provided in section
14 45-104.01 from the original delinquency date of the tax that would have
15 been due until the date paid, to the extent it becomes due under this
16 section, shall be considered delinquent and shall be immediately payable
17 to the county or counties in which the property was located when
18 exempted.

19 (c) All amounts received by a county under this section shall be
20 allocated to each taxing unit levying taxes on tangible personal property
21 in the county in the same proportion that the levy on tangible personal
22 property of such taxing unit bears to the total levy of all of such
23 taxing units.

24 (7) Notwithstanding any other limitations contained in the laws of
25 this state, collection of any taxes deemed to be underpayments by this
26 section shall be allowed for a period of three years after the end of the
27 entitlement period.

28 (8) For a tier 6 project, any credits carried over more than one
29 year past the end of the entitlement period shall be subject to recapture
30 if, prior to the expiration of sixteen years after the end of the
31 entitlement period, the taxpayer moves its headquarters, if any, from

1 this state or reduces its after-inflation-adjusted payroll within this
2 state by more than ten percent from its peak payroll within this state
3 during the entitlement period.

4 ~~(9)~~ (8) Any amounts due under this section shall be recaptured
5 notwithstanding other allowable credits and shall not be subsequently
6 refunded under any provision of the Nebraska Advantage Act unless the
7 recapture was in error.

8 ~~(10)~~ (9) The recapture required by this section shall not occur if
9 the failure to maintain the required levels of employment or investment
10 was caused by an act of God or national emergency.

11 2. On page 7, line 17, strike "section 77-5726" and insert "sections
12 77-5726 and 77-5727".

13 3. Renumber the remaining sections and correct the repealer
14 accordingly.